

Stephen Escondon Medina

CDC # E-63667

P.O. Box 5002

Calipatria State Prison

Calipatria, CA 92233

FILED

2008 AUG -5 PM 3:14

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

In The United States District Court
For The Southern District Of California

NUNC PRO TUNC

JUL 30 2008

STEPHEN ESCONDON MEDINA,
Plaintiff,

v.

CORRECTIONAL OFFICER R. HUESO, et al,
Defendants.

08916
Case No. 08CV0869 JLS RBB

NOTICE OF MOTION;
MOTION FOR EXTENSION
OF TIME TO SERVE SUMMONS
AND COMPLAINT ON DEFENDANT

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

You are hereby notified that on _____, 2008, at _____
in Courtroom ___ of the U.S. District Court, Southern District
of California Courthouse, Plaintiff Stephen Escondon Medina
will bring a motion for extension of time to serve Defendant
Castone with a summons and complaint in the above-captioned
case. Plaintiff will move the court to grant an extension of
time that the Court deems appropriate in light of Plaintiff's
grounds. Plaintiff makes this request to protect his right
to serve Defendant Castone within the 120-day period.
Plaintiff submits this motion for decision by the court
without oral argument.

This motion is based on all papers filed and records
in this action.

Dated: July 24, 2008

Stephen Medina

STEPHEN ESCONDON MEDINA

Plaintiff / Movant

CDC# E-63667

P. O. Box 5002

Calipatria State Prison

Calipatria, CA 92233

(Proceeding Pro Per)

MOTION REQUESTING EXTENSION OF TIME
TO SERVE SUMMONS AND COMPLAINT
TO DEFENDANT

Plaintiff respectfully requests, pursuant to Fed. R. Civ. P. 4(j) and 6(b), an order extending the time to serve Defendant Castone with a summons and complaint in the above-caption case, Medina v. R. Hueso.

This motion is made on the grounds that:

1. On 7/22/08, Plaintiff received from the U.S. Marshals office Plaintiff's summons and complaint for Defendant Castone. The complaint was "unexecuted" because Calipatria State prison — Defendant Castone's employer — states he was never employed at Calipatria state prison.
2. Plaintiff has been misled by this defendant's employers, for they have previously provided the name Plaintiff has identified Defendant Castone with.
3. Plaintiff, who is representing himself on a pro se basis, is unaware of what steps to take at this point to have Defendant Castone served. Filed contemporaneously with this motion is a request to the Court Clerk asking for direction. Plaintiff researched for hours in the Federal Rules of Civil Procedure, and Local Rules of Civil Procedure for this Court, but was unsuccessful in obtaining information on what appropriate way to serve the Defendant in this situation. The rules are unclear for Plaintiff's situation.

4. Defendant Castone is an integral party to Plaintiff's complaint, and prejudice will ensue if he is not allowed to serve this defendant.

5. Plaintiff has requested no previous extensions of time in this matter and to date, all of his filings with this Court have been made in a timely manner.

Respectfully submitted this 24th day of July, 2008, at Calipatria state prison.

By: Stephen Medina
STEPHEN ESCONDON MEDINA
Plaintiff / Movant
CDC # E-63667
P. O. Box 500Z
Calipatria State Prison
Calipatria, CA 92233

MEDINA V. R. HUESO, ET AL,

CASE NO.: 08CV0869 JLS RBB

VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF IMPERIAL

(C.C.P. SEC. 446 & 2015.5: 28 U.S.C. 1746)

I, Stephen Escandon Medina (C.C.P. SEC. 446 & 2015.5: 28 U.S.C. 1746) DECLARE UNDER PENALTY OF PERJURY THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION. I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN KNOWLEDGE EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 24 DAY OF July 2008 AT
CALIPATRIA STATE PRISON, CALIPATRIA CALIFORNIA 92233-5002

(SIGNATURE) Stephen Medina
DECLARANT/PRISONER

PROOF OF SERVICE BY MAIL

(C.C.P. SEC. 1013 (a) & 2015.5 28 U.S.C. 1746)

I, Stephen Escandon Medina AM A RESIDENT OF CALIPATRIA STATE PRISON, IN THE COUNTY OF IMPERIAL, STATE OF CALIFORNIA; I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM / AM NOT A PARTY OF THE ABOVE ENTITLED ACTION. MY STATE PRISON ADDRESS IS P.O. BOX 5002, CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002.

ON July 24 2008 IS SERVED THE FOREGOING:

NOTICE OF MOTION; MOTION FOR EXTENSION OF TIME; LETTER DATED JULY 23, 2008

SET FORTH EXACT TITLE OF DOCUMENTS SERVED

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY(S) THEREOF, ENCLOSED IN A SEALED ENVELOPE(S) WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED AT CALIPATRIA STATE PRISON, CALIPATRIA, CALIFORNIA 92233-5002.

TIFFANY R. HIXSON
Deputy Attorney General
110 West A Street, Suite 1100
P.O. Box 85266
San Diego, CA 92186-5266
(Counsel for Defendant R. Hueso)

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE July 24, 2008 Stephen Escandon Medina
(DECLARANT/PRISONER)

Stephen Escondon Medina
CDC # E-63667
P. O. Box 5002
Calipatria State Prison
Calipatria, CA 92233

July 23, 2008

"ORIGINAL"

Office of the Clerk
U.S. District Court
Southern District of California
880 Front Street, Suite 4290
San Diego, CA 92101-8900

RE: Medina v. R. Hueso, et al.
Case No. 08CV0869 JLS RBB

Dear Court Clerk:

I am the plaintiff in the above-entitled case proceeding in pro per. I am having a problem. On 7/22/08, I received from the U.S. Marshal's Office my summons and complaint for Defendant Correctional Officer Castone. The "Notice of Service" receipt I received was very difficult to read and several boxes on the receipt were not provided with information. After several minutes had passed in trying my best to decipher what was legible on the receipt, I was able to make out that the summons and complaint was "unexecuted per lit coordinator aft never was employed at Calipatria." By this, I assume Defendant Castone was not served because Calipatria state prison states he was never employed at this prison.

Clearly I have been misled by this Defendant's employers, for they are the officials who initially provided Defendant Castone's name to me. As such, because this defendant is an integral party to my complaint and prejudice will ensue if I am not allowed to serve this defendant, I respectfully request direction.

The local rules of this Court do not provide information on what I must do to serve this defendant in a situation such as this. The remaining defendant has already been served.

I am filing an extension of time contemporaneously with this request to extend the 120-day period of Rule 4(j), Fed. R. Civ. P. to serve Defendant Castone.

Please instruct me on what I must do to correctly serve this defendant.

Sincerely,

Stephen Medina
Stephen Escondon Medina
Plaintiff
Proceeding Pro per